

KATTEN MUCHIN ROSENMAN LLP
50 Rockefeller Plaza
New York, New York 10020
(212) 940-8800
Attorneys for Defendants

Hearing Date: September 14,
2022
Opposition Date: June 27, 2022
Reply Date: July 27, 2022

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION,)	
)	Adv. Pro. No. 08-01789 (CGM)
Plaintiff-Applicant,)	
)	SIPA Liquidation
v.)	(Substantively Consolidated)
)	
BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,)	
Defendant.)	
In re:)	
)	
BERNARD L. MADOFF,)	
)	
Debtor.)	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,)	Adv. Pro. No. 12-01669 (CGM)
)	
Plaintiff,)	ORAL ARGUMENT
)	REQUESTED
v.)	
)	
Barfield Nominees Ltd. and Northern Trust Corporation,)	
Defendant.)	
)	
)	

**DECLARATION OF ANTHONY L. PACCIONE
IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE TRUSTEE'S COMPLAINT**

ANTHONY L. PACCIONE, under penalty of perjury, declares:

1. I am a member of the bar of the State of New York and of this Court and a member of Katten Muchin Rosenman LLP, counsel for defendant Barfield Nominees Ltd. ("Barfield") and

Northern Trust Corporation (“Northern Trust,” and together with Barfield, the “Defendants”) in this adversary proceeding. I submit this Declaration in support of the Defendants’ motion to dismiss the Complaint (the “Complaint” or “Compl.,” No. 12-01669 ECF 1) filed by plaintiff Irving H. Picard, Trustee (the “Trustee”) for the Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Estate of Bernard L. Madoff in this proceeding.

2. **Exhibit A** is a true and correct copy of the Complaint¹ in *Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, v. Barfield Nominees Ltd. and Northern Trust Corporation*, Adv. Proc. No. 12-01669 (Bankr. S.D.N.Y. May 25, 2012), ECF 1. Exhibit B to the Complaint shows the cash withdrawals made from Fairfield Sentry Limited (“Sentry”) accounts at BLMIS during the period November 29, 1990 through December 3, 2008. There are four accounts, but only the first, No. 1FN012, shows any cash withdrawals made by Sentry. Exhibit C to the Complaint shows the alleged subsequent transfers to the Defendants.

3. **Exhibit B** is a true and correct copy of Customer Claim No. 005476 filed by Barfield on December 11, 2008 for account #10010201 at Kingate Global Fund, Ltd.

4. **Exhibit C** is a true and correct copy of Customer Claim No. 008904 filed by Barfield on December 11, 2008 for account #10010201 at Kingate Global Fund, Ltd.

5. **Exhibit D** is a true and correct copy of the Fairfield Amended Complaint, *Picard v. Fairfield Sentry Ltd.*, Adv. Proc. No. 09-1239 (Bankr. S.D.N.Y. July 20, 2010), ECF 23 (without exhibits).

¹ Capitalized terms not defined in this Declaration have the meaning provided in the concurrently filed *Memorandum of Law in Support of Barfield Defendants’ Motion to Dismiss the Complaint*.

6. **Exhibit E** is a true and correct copy the Fairfield Second Amended Complaint, Adv. Proc. No. 09-2139 (Bankr. S.D.N.Y. Aug. 28, 2020), ECF 286.

7. **Exhibit F** is a true and correct copy of the Fairfield Settlement Agreement, *Picard v. Fairfield Sentry Ltd.*, Adv. Proc. No. 09-1239 (Bankr. S.D.N.Y. May 9, 2011), ECF 69-2. This Court approved the Fairfield Settlement Agreement. Adv. Proc. No. 09-1239 (Bankr. S.D.N.Y. June 7, 2011), ECF 92.

8. **Exhibit G** is a true and correct copy of an excerpt from the Declaration of William Hare, counsel for the Fairfield Liquidators, attaching the Memorandum of Association and Articles of Association of Fairfield Sentry Limited, as filed with the Court in *Fairfield Sentry Ltd. v. ABN AMRO Schwiz AG, et al.*, Adv. Pro. No. 10-03636 (Bankr. S.D.N.Y. Oct. 26, 2016), ECF 164 and 164-6.

9. **Exhibit H** are true and correct copies of Exhibits 5 and 6 to the Trustee's Second Amended Complaint against Sentry, the Fairfield Second Amended Complaint, Adv. Proc. No. 09-2139 (Bankr. S.D.N.Y. Aug. 28, 2020), ECF 286-5, 286-6. These exhibits are redemption confirmations for withdrawals from Sentry made by Fairfield Sigma Limited and Fairfield Lambda Limited.

10. **Exhibit I** are true and correct copies of excerpts from complaints, or exhibits to complaints, filed by the Trustee in the following adversary proceedings:

<i>Source</i>	<i>Transferee(s)</i>
10-05346 ECF 1-1	Merrill Lynch International
11-01885 ECF 1-3	Safra
11-02551 ECF 1-4	Delta Bank
11-02554 ECF 1-4	NBK
11-02568 ECF 1-4	Cathay Bank
11-02569 ECF 1-4	Barclays Suisse
11-02569 ECF 1-4	Barclays Private Bank

11-02571 ECF 1-4	BPES
11-02763 ECF 1-4	Inteligo
11-02910 ECF 1-3	MLBS
11-02922 ECF 1-3	BJB
11-02925 ECF 1-5	CreditSuisseNominees(Guernsey)Limited
11-02925 ECF 1-5	CreditSuisseLondonNomineesLimited
11-02929 ECF 1-3	LGT Liechtenstein
12-01005 ECF 1-6	Sico
12-01019 ECF 1-6	Banco Itau
12-01019 ECF 1-7	Itau International
12-01022 ECF 1-10	Agricole Suisse
12-01046 ECF 1-3	SNS Defendants
12-01207 ECF 1-3	Lloyds
12-01209 ECF 1-3	Banca Del Gottardo
12-01209 ECF 1-3	BSI
12-01210 ECF 1-14	Schroder & Co. Bank AG
12-01211 ECF 1-3	Union Global A Fund
12-01211 ECF 1-3	Union Global Fund
12-01216 ECF 1-6	Hapoalim Switzerland
12-01565 ECF 1-6	The Standard Chartered Defendants
12-01576 ECF 1-3	BNP Paribas
12-01669 ECF 1-9	Barfield Defendants
12-01670 ECF 1-9	BBH
12-01676 ECF 1-5	Clariden/Bank Leu
12-01677 ECF 1-5	SG Suisse
12-01690 ECF 1-7	EFG Bank
12-01693 ECF 1-3	Lombard Odier
12-01697 ECF 1-3	ABN AMRO Defendants
12-01699 ECF 1-5	RBC-Dominion
12-01699 ECF 1-5	Guernroy or RBC-CI

11. Set forth below is a chart summarizing the redemptions from Sentry on July 15, 2008 as alleged in the complaints and/or exhibits attached as Exhibits A, H, and I hereto. A straightforward analysis of the transactions shown in Exhibits A, H, and I shows the following:

- (a) On May 5, 2008, BLMIS transferred \$80,000,000 to Sentry (Compl. Ex. B).
- (b) On July 10, 2008, BLMIS transferred \$20,000,000 to Sentry (Compl. Ex. B).

(c) In a single day – July 15, 2008 – Sentry made \$112,538,526 in transfers; for the 61 transfers made that day, it is simply not possible for all subsequent transfers to consist of BLMIS funds when Sentry distributed \$12,538,526 more than it collected from BLMIS (Compl. Ex. C; Paccione Decl. Exs. H, I):

<i>Date</i>	<i>Recipient</i>	<i>Amount</i>	<i>Source</i>
7/15/2008	NBK	(38,000)	11-02554 ECF 1-4
7/15/2008	Cathay Bank	(113,944)	11-02568 ECF 1-4
7/15/2008	Barclays Private Bank	(820,636)	11-02569 ECF 1-4
7/15/2008	Barclays Suisse	(52,997)	11-02569 ECF 1-4
7/15/2008	Barclays Suisse	(122,092)	11-02569 ECF 1-4
7/15/2008	BPES	(52,997)	11-02571 ECF 1-4
7/15/2008	MLBS	(791,341)	11-02910 ECF 1-3
7/15/2008	BJB	(93,269)	11-02922 ECF 1-3
7/15/2008	BJB	(198,739)	11-02922 ECF 1-3
7/15/2008	CreditSuisseLondonNomineesLimited	(1,944,780)	11-02925 ECF 1-5
7/15/2008	CreditSuisseLondonNomineesLimited	(722,569)	11-02925 ECF 1-5
7/15/2008	CreditSuisseLondonNomineesLimited	(236,738)	11-02925 ECF 1-5
7/15/2008	CreditSuisseLondonNomineesLimited	(171,000)	11-02925 ECF 1-5
7/15/2008	CreditSuisseLondonNomineesLimited	(35,773)	11-02925 ECF 1-5
7/15/2008	LGT Liechtenstein	(1,059,944)	11-02929 ECF 1-3
7/15/2008	LGT Liechtenstein	(132,493)	11-02929 ECF 1-3
7/15/2008	Banco Itau	(112,010)	12-01019 ECF 1-6
7/15/2008	Banco Itau	(128,531)	12-01019 ECF 1-6

7/15/2008	Banco Itau	(130,227)	12-01019 ECF 1-6
7/15/2008	Banco Itau	(182,377)	12-01019 ECF 1-6
7/15/2008	Banco Itau	(202,992)	12-01019 ECF 1-6
7/15/2008	Banco Itau	(207,325)	12-01019 ECF 1-6
7/15/2008	Banco Itau	(257,050)	12-01019 ECF 1-6
7/15/2008	Banco Itau	(1,614,599)	12-01019 ECF 1-6
7/15/2008	Itau International	(100,000)	12-01019 ECF 1-7
7/15/2008	Itau International	(51,500)	12-01019 ECF 1-7
7/15/2008	Itau International	(54,020)	12-01019 ECF 1-7
7/15/2008	Agricole Suisse	(7,950)	12-01022 ECF 1-10
7/15/2008	SNS Defendants	(97,515)	12-01046 ECF 1-3
7/15/2008	Lloyds	(113,089)	12-01207 ECF 1-3
7/15/2008	BSI	(998,997)	12-01209 ECF 1-3
7/15/2008	Banca Del Gottardo	(110,115)	12-01209 ECF 1-4
7/15/2008	Union Global Fund	(113,944)	12-01211 ECF 1-3
7/15/2008	Hapoalim Switzerland	(107,062)	12-01216 ECF 1-6
7/15/2008	Hapoalim Switzerland	(256,189)	12-01216 ECF 1-6
7/15/2008	Hapoalim Switzerland	(1,459,560)	12-01216 ECF 1-6
7/15/2008	Hapoalim Switzerland	(13,478,540)	12-01216 ECF 1-6
7/15/2008	The Standard Chartered Defendants	(100,000)	12-01565 ECF 1-6
7/15/2008	The Standard Chartered Defendants	(230,000)	12-01565 ECF 1-6
7/15/2008	The Standard Chartered Defendants	(264,422)	12-01565 ECF 1-6
7/15/2008	The Standard Chartered Defendants	(1,197,722)	12-01565 ECF 1-6

7/15/2008	The Standard Chartered Defendants	(1,566,588)	12-01565 ECF 1-6
7/15/2008	Barfield Defendants	(3,000,000)	12-01669 ECF 1-9
7/15/2008	BBH	(136,468)	12-01670 ECF 1-9
7/15/2008	BBH	(40,715)	12-01670 ECF 1-9
7/15/2008	BBH	(22,524)	12-01670 ECF 1-9
7/15/2008	Clariden/Bank Leu	(239,653)	12-01676 ECF 1-5
7/15/2008	Clariden/Bank Leu	(193,731)	12-01676 ECF 1-5
7/15/2008	SG Suisse	(46,426)	12-01677 ECF 1-5
7/15/2008	EFG Bank	(4,847,653)	12-01690 ECF 1-7
7/15/2008	EFG Bank	(632,124)	12-01690 ECF 1-7
7/15/2008	EFG Bank	(433,000)	12-01690 ECF 1-7
7/15/2008	EFG Bank	(350,179)	12-01690 ECF 1-7
7/15/2008	EFG Bank	(168,000)	12-01690 ECF 1-7
7/15/2008	EFG Bank	(20,000)	12-01690 ECF 1-7
7/15/2008	Lombard Odier	(49,022)	12-01693 ECF 1-3
7/15/2008	ABN AMRO Defendants	(27,541,099)	12-01697 ECF 1-3
7/15/2008	Guernroy or RBC-CI	(136,296)	12-01699 ECF 1-5
7/15/2008	Guernroy or RBC-CI	(52,000)	12-01699 ECF 1-5
7/15/2008	Sentry to Lambda	(900,000)	No. 09-1239, Ex. 9
7/15/2008	Sentry to Sigma	(44,000,000)	No. 09-1239, Ex. 8

12. In another example, set forth below is an additional chart summarizing the redemptions from Sentry between January 17, 2008 to February 15, 2008, as alleged in the

complaints and/or exhibits attached as Exhibits A, H, and I hereto. A straightforward analysis of the transactions shown in Exhibits A, H, and I shows the following:

(a) On January 11, 2008, BLMIS transferred \$70,000,000 into Sentry. (Compl. Ex. B).

(b) On January 17, 2008, Sentry distributed \$78,236,628 into various transferee's accounts. (Compl. Ex. C; Paccione Decl. Exs. H, I). Thus, BLMIS funds were exhausted on that date:

<i>Date</i>	<i>Recipient</i>	<i>Amount</i>	<i>Source</i>
1/17/2008	Safra	(97,310)	11-01885 ECF 1-3
1/17/2008	Safra	(112,561)	11-01885 ECF 1-3
1/17/2008	Safra	(120,121)	11-01885 ECF 1-3
1/17/2008	Safra	(349,110)	11-01885 ECF 1-3
1/17/2008	Safra	(632,295)	11-01885 ECF 1-3
1/17/2008	Safra	(646,439)	11-01885 ECF 1-3
1/17/2008	Safra	(748,519)	11-01885 ECF 1-3
1/17/2008	Delta Bank	(25,318)	11-02551 ECF 1-4
1/17/2008	NBK	(60,000)	11-02554 ECF 1-4
1/17/2008	Barclays Suisse	(293,571)	11-02569 ECF 1-4
1/17/2008	Barclays Suisse	(449,597)	11-02569 ECF 1-4
1/17/2008	BPES	(133,036)	11-02571 ECF 1-4
1/17/2008	Inteligo	(28,250)	11-02763 ECF 1-4
1/17/2008	Inteligo	(80,332)	11-02763 ECF 1-4
1/17/2008	Inteligo	(500,000)	11-02763 ECF 1-4

1/17/2008	CreditSuisseLondonNomineesLimited	(5,367,126)	11-02925 ECF 1-5
1/17/2008	CreditSuisseLondonNomineesLimited	(1,020,000)	11-02925 ECF 1-5
1/17/2008	CreditSuisseLondonNomineesLimited	(210,533)	11-02925 ECF 1-5
1/17/2008	CreditSuisseLondonNomineesLimited	(156,285)	11-02925 ECF 1-5
1/17/2008	LGT Liechtenstein	(669,507)	11-02929 ECF 1-3
1/17/2008	Sico	(109,934)	12-01005 ECF 1-6
1/17/2008	Banco Itau	(70,000)	12-01019 ECF 1-6
1/17/2008	Banco Itau	(80,506)	12-01019 ECF 1-6
1/17/2008	Banco Itau	(285,136)	12-01019 ECF 1-6
1/17/2008	Agricole Suisse	(10,333)	12-01022 ECF 1-10
1/17/2008	Agricole Suisse	(134,031)	12-01022 ECF 1-10
1/17/2008	Agricole Suisse	(160,548)	12-01022 ECF 1-10
1/17/2008	SNS Defendants	(150,886)	12-01046 ECF 1-3
1/17/2008	Lloyds	(324,931)	12-01207 ECF 1-3
1/17/2008	BSI	(231,360)	12-01209 ECF 1-3
1/17/2008	Schroder & Co. Bank AG	(14,208)	12-01210 ECF 1-14
1/17/2008	Hapoalim Switzerland	(51,542)	12-01216 ECF 1-6
1/17/2008	The Standard Chartered Defendants	(50,000)	12-01565 ECF 1-6
1/17/2008	The Standard Chartered Defendants	(123,788)	12-01565 ECF 1-6
1/17/2008	The Standard Chartered Defendants	(232,736)	12-01565 ECF 1-6
1/17/2008	The Standard Chartered Defendants	(264,574)	12-01565 ECF 1-6
1/17/2008	The Standard Chartered Defendants	(1,508,591)	12-01565 ECF 1-6
1/17/2008	The Standard Chartered Defendants	(3,958,880)	12-01565 ECF 1-6

1/17/2008	The Standard Chartered Defendants	(6,514,834)	12-01565 ECF 1-6
1/17/2008	BNP Paribas	(311,976)	12-01576 ECF 1-3
1/17/2008	Clariden/Bank Leu	(55,492)	12-01676 ECF 1-5
1/17/2008	EFG Bank	(1,087,204)	12-01690 ECF 1-7
1/17/2008	EFG Bank	(579,380)	12-01690 ECF 1-7
1/17/2008	EFG Bank	(317,595)	12-01690 ECF 1-7
1/17/2008	EFG Bank	(140,000)	12-01690 ECF 1-7
1/17/2008	Lombard Odier	(68,253)	12-01693 ECF 1-3
1/17/2008	ABN AMRO Defendants	(10,000,000)	12-01697 ECF 1-3
1/17/2008	Sentry to Lambda	(2,100,000)	No. 09-1239, Ex. 9
1/17/2008	Sentry to Sigma	(37,600,000)	No. 09-1239, Ex. 8
	Total	\$78,236,628	

(c) On February 15, 2008, without receiving any more money from BLMIS, Sentry once again transferred another \$26,035,873 to 42 additional subsequent transferees, including \$415,917 to Barfield or Northern Trust (Compl. Ex. C; Paccione Decl. Exs. H, I), making it impossible for Barfield's redemption payment on February 15, 2008 to have originated with BLMIS customer property:

<i>Date</i>	<i>Recipient</i>	<i>Amount</i>	<i>Source</i>
2/15/2008	Merrill Lynch International	(2,000,000)	10-05346 ECF 1-1
2/15/2008	Delta Bank	(129,974)	11-02551 ECF 1-4
2/15/2008	NBK	(525,315)	11-02554 ECF 1-4
2/15/2008	Cathay Bank	(152,070)	11-02568 ECF 1-4

2/15/2008	Barclays Suisse	(103,862)	11-02569 ECF 1-4
2/15/2008	Inteligo	(5,000)	11-02763ECF 1-4
2/15/2008	MLBS	(353,296)	11-02910ECF 1-3
2/15/2008	BJB	(145,558)	11-02922 ECF 1-3
2/15/2008	CreditSuisseLondonNomineesLimited	(8,198,102)	11-02925 ECF 1-5
2/15/2008	CreditSuisseNominees(Guernsey)Limited	(259,948)	11-02925 ECF 1-5
2/15/2008	CreditSuisseLondonNomineesLimited	(178,000)	11-02925 ECF 1-5
2/15/2008	CreditSuisseLondonNomineesLimited	(67,587)	11-02925 ECF 1-5
2/15/2008	LGT Liechtenstein	(73,617)	11-02929 ECF 1-3
2/15/2008	Sico	(209,295)	12-01005 ECF 1-6
2/15/2008	Banco Itau	(80,000)	12-01019 ECF 1-6
2/15/2008	Itau International	(19,208)	12-01019 ECF 1-7
2/15/2008	Lloyds	(244,533)	12-01207 ECF 1-3
2/15/2008	BSI	(64,987)	12-01209 ECF 1-3
2/15/2008	Banca Del Gottardo	(107,541)	12-01209 ECF 1-4
2/15/2008	Schroder & Co. Bank AG	(133,704)	12-01210 ECF 1-14
2/15/2008	Union Global A Fund	(152,070)	12-01211 ECF 1-3
2/15/2008	Hapoalim Switzerland	(210,982)	12-01216 ECF 1-6
2/15/2008	Hapoalim Switzerland	(525,315)	12-01216 ECF 1-6
2/15/2008	The Standard Chartered Defendants	(250,000)	12-01565 ECF 1-6
2/15/2008	The Standard Chartered Defendants	(389,922)	12-01565 ECF 1-6
2/15/2008	The Standard Chartered Defendants	(680,000)	12-01565 ECF 1-6
2/15/2008	The Standard Chartered Defendants	(1,210,426)	12-01565 ECF 1-6

2/15/2008	The Standard Chartered Defendants	(3,374,367)	12-01565 ECF 1-6
2/15/2008	Barfield Defendants	(415,917)	12-01669 ECF 1-9
2/15/2008	BBH	(185,746)	12-01670 ECF 1-9
2/15/2008	Clariden/Bank Leu	(55,551)	12-01676 ECF 1-5
2/15/2008	EFG Bank	(3,622,664)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(596,778)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(511,267)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(129,974)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(111,089)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(103,979)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(90,990)	12-01690 ECF 1-7
2/15/2008	EFG Bank	(24,100)	12-01690 ECF 1-7
2/15/2008	Lombard Odier	(174,165)	12-01693 ECF 1-3
2/15/2008	Lombard Odier	(129,982)	12-01693 ECF 1-3
2/15/2008	RBC-Dominion	(38,992)	12-01699 ECF 1-5
	Total	\$26,035,873	

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 28, 2022.

/s/ Anthony L. Paccione
Anthony L. Paccione